

### REMARKS

The above-identified patent application has been amended and reconsideration and reexamination are requested.

The examiner rejected claims 17-19 under 35 USC 101 as being directed to non-statutory subject matter.

Applicant has amended claim 17 to call for a method executed on a computer system. Claim 17 was also amended to recite receiving by the computer system a request for availability of seating on an airline flight and executing in the computer system an algorithm to predict the seating availability on a competitive flight and receiving by the computer system an actual availability response for a flight .... As amended claim 17 is now directed to acts that occur in a computer system and produce a concrete result and hence is statutory.

Applicant has also amended claim 20 to make it a method claim.

Before discussing how applicant's claims distinguish over the art it may be helpful to the examiner if Applicant addresses some general points concerning the subject matter of the scheduling, faring and determining availability of modes of transportation.

Airlines institute selling policies that can change to meet supply and demand considerations to maximize profit on any given flight. When a passenger specifies an itinerary (e.g., flight and fare) the itinerary has one or more flight segments. In order to issue a ticket for a single or multi-flight segment itinerary, each flight segment must have available seats. Also, availability is often governed by characteristics of the passenger. Common characteristics include the price that the passenger is willing to pay for the ticket, whether the passenger is using other flights on that airline, whether the passenger is a frequent flyer and so forth.

Generally, before booking a flight (generally determined by scheduling and faring systems) and issuing a ticket, the seller sends a request for availability information to the airline's availability system. Availability is directed to aspects of inventory and airline selling policies. Availability it is not merely that a flight combination can exist (based on faring and scheduling), since often a seat will not be available on the flight because the seat is sold out or

the airline is reserving it for a passenger it expects to get that will pay a higher price, is a frequent flyer, or is traveling on other flights of the airline, etc.

The examiner rejected claims 1 and 17 under 35 USC 103(a) as obvious over Gaspard US Patent 6,411,897.

Claim 1 is directed to an availability prediction system that predicts relative, competitive availability of seating on an airline flight. Gaspard does not address this subject matter. In fact there is nothing in Gaspard that relates to competitive travel scenarios. In claim 1, the subject matter of the claim is to predict what a competitor's availability answer would be in response to a query for seat availability on that competitor's flight. Decision logic compares the predicted answer from the availability predictor (which is predicting what the competitor will answer with) and a potential answer from the availability system to establish a decision with respect to actual availability.

Gaspard is totally devoid of any teaching of competitive scenarios, an availability predictor that predicts seating availability on a competitive flight, an availability system that produces an actual availability response for a flight and decision logic that compares the predicted answer from the availability predictor and the potential answer from the availability system to establish a decision with respect to actual availability.

Predicting arrival and departure times (Col. 7 lines 64-66) as contended by the examiner has nothing to do with predicting availability of a seat on an airline flight. Algorithms that are used to predict arrival and departure times to generate a route schedule has nothing at all to do with a system that predicts whether an airline would make a seat available on a flight if queried by an availability query. One of skill in the art would not look to predicting of arrival and departure times to suggest seat availability. Col. 3 lines 55-60 has nothing to do with actual availability response from an availability system but again arrival/departure times.

At col. 10 lines 60-63 the examiner considers the teachings of Gaspard directed to predicting arrival/departure times as suggesting the decision logic. First, as argued, predicting arrival/departure times has nothing at all to do with seat availability. Second, Gaspard does not compare to establish a decision with respect to actual availability. Gaspard merely compares predicted time to actual time for ascertaining the reliability of the predicted times.

Gaspard used the phrase "seat availability" at Col. 11 Lines 7-27. Gaspard usage of seat availability is not relevant to claim 1. Gaspard does not predict seat availability, since it is a physical fact given received transportation requests. Moreover, seat availability in Gaspard is for one's own transportation not that of a competitor's and is not determined for the purpose of comparing a predicted answer from an availability predictor that models or predicts a competitor's availability system, and a potential answer from an availability system to establish a decision with respect to actual availability of a seat. Claim 1 is thus distinct over Gaspard.

Claim 17 recites a method executed on a computer system including receiving ... a request for availability of seating on an airline flight and executing ... an algorithm to predict the seating availability on a competitive flight. Receiving ... an actual availability response for a flight and comparing the predicted answer from the availability predictor and the potential answer from the availability system to establish a decision with respect to actual availability. For similar reasons as discussed above claim 17 is distinct over Gaspard.

The examiner rejected claims 4-10 under 35 USC 103(a) as obvious over Gaspard US Patent 6,411,897 in view of Lynch 6,018,715.

Lynch is likewise not relevant to these claims. Lynch is directed to weighting different travel options based on user preferences. The teachings in Lynch have nothing to do with the subject matter of claims 4-10.

Claim 4 distinguishes over Gaspard and Lynch. These references neither describe nor suggest whether taken separately or in combination that the decision logic determines whether the prediction from the availability predictor indicates that a competitor is in a more favorable or less favorable competitive position than the answer produced by the availability system. The references taken as a whole do not suggest determining seat availability between competitors, and do not suggest to use decision logic to determine if a competitor is in a more or less favorable competitive position than the answer produced by an availability system.

Claim 5 which recites that the decision ... is based on the message from the decision logic, claim 6... that the message from the decision logic can have a plurality of states, claim 7 that one of the states includes a neutral state that does not tend to modify the potential answer

received from the availability system, all serve to further distinguish over the cited references. Similar arguments apply to claims 8-10.

The examiner rejected claims 2, 3, 18 and 19 under 35 USC 103(a) as obvious over Gaspard US Patent 6,411,897 in view of Lynch 6,018,715 and further in view of Lynch 5,839,114 (Lynch '114).

The examiner uses Lynch 114 to teach "wherein the decision of the decision logic is a bias ... ."

Claim 2 recites that the decision of the decision logic is a bias that determines whether the potential answer should be modified based upon the relative competitive position of the competitor represented by the availability predictor. None of the references cited by the examiner is directed to the limitations of the base claim 1. In addition, these references including Lynch 114 do not suggest decision logic that produces a decision in the form of a bias that can be used to modify a potential availability answer based upon the relative competitive position of the competitor represented by the availability predictor.

The teachings identified by the Examiner (col. 7 line 66 to col. 8 line 27) relates again to travel preferences not to seat availability and especially not to a decision that is a bias that determines whether the potential answer should be modified based upon the relative competitive position of the competitor represented by the availability predictor.

Claim 3 likewise distinguishes by reciting modifying logic that is responsive to the availability response from the availability system and from the bias from the decision logic to modify the actual availability answer in accordance with the bias. The references including Lynch 114 do not suggest this feature.

Claims 18 and 19 are allowable for analogous reasons.

The examiner rejected claims 11 and 20 under 35 USC 103(a) as obvious over Gaspard US Patent 6,411,897 in view of Lynch 6,018,715 and further in view of Lynch 6,119,094 (Lynch '094).

In the examiners remarks however it appears that claims 11, 12-16 and 20 were rejected. Applicant will address claims 12-16 in addition to claims 11 and 20.

Claim 11, which depends from claim 3 recites that the decision logic determines whether the competitor's available booking codes are at a lower price than those, which the availability system indicates the user of the system can offer. Claim 11 further distinguishes since Lynch 094 does not even mention booking codes. The base references do not teach the subject matter of the base claims and hence claim 11 and by analogy claim 20 are further distinguished over the references.

Lynch '094 (col. 3, lines 59-63) relates to identifying low cost travel arrangements not to decision logic that determines whether the competitor's available booking codes are at a lower price than those, which the availability system indicates the user of the system can offer.

Claim 12 further distinguishes since the references do not suggest that if the competitor's available booking codes are not at a lower price, then the system can return a bias towards making the seat unavailable, as in claim 12, or if the competitor's available booking codes are not at a lower price, then the system can test whether the original query was for a low cost fare and return a bias towards making the seat not available if the query was for a low fare, as in claim 13.

Claim 14 distinguishes by reciting if the competitor's available booking codes are at a lower price than those being offered by the user of the system, the system returns a bias towards making the seat available. Claim 15 distinguishes by reciting if the competitor's available booking codes are at a lower price than those being offered by the user of the system, the system determines whether the query was for a high cost fare, and returns a bias towards making the seat available if for a high cost fare and claim 16 wherein the messages that are returned change the availability message from the availability system.

Attached is a marked-up version of the changes being made by the current amendment.

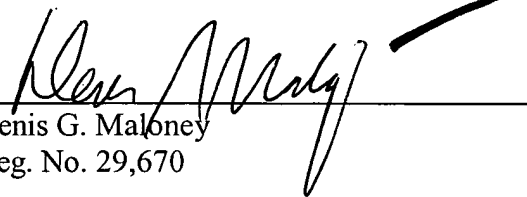
Applicant : Jeremy Wertheimer and Carl G.  
DeMarcken  
Serial No. : 09/615,574  
Filed : July 13, 2000  
Page : 7

Attorney's Docket No.: 09765-015001

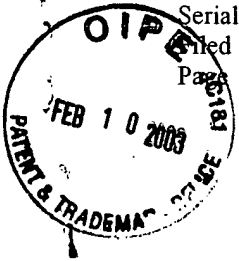
Applicant asks that all claims be allowed. Please apply any other charges or credits to  
Deposit Account No. 06-1050.

Respectfully submitted,

Date: 2/3/03

  
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Version with markings to show changes made

In the claims:

Claims 17 and 20 have been amended as follows:

(Amended) 17. A method executed on a computer system of predicting relative, competitive availability of seating on an airline flight comprises:

receiving by the computer system a request for availability of seating on an airline flight  
and executing in the computer system an algorithm to predict [predicting] the seating  
availability on a competitive flight;

[providing] receiving by the computer system an actual availability response for a flight;  
and

comparing the predicted answer from the availability predictor and the potential answer  
from the availability system to establish a decision with respect to actual availability.

(Amended) 20. The [system] method of claim 17 further comprising:  
determining whether the competitor's available booking codes are at a lower price than  
those which the availability system indicates the user of the system can offer.

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FEB 12 2003  
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